

105TH CONGRESS  
1ST SESSION

# H. R. 2290

To amend title I of the Employee Retirement Income Security Act of 1974  
to improve enforcement under such Act.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1997

Mr. SHAYS (for himself and Mr. PAYNE) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to improve enforcement under such Act.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Security and Enforcement Compliance for Retirement  
6       under ERISA”.

7       (b) TABLE OF CONTENTS.—The table of contents of  
8       this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Repeal of limited scope audit.
- Sec. 3. Reporting and enforcement requirements for employee benefit plans.
- Sec. 4. Additional requirements for qualified public accountants.
- Sec. 5. Clarification of fiduciary penalties.
- Sec. 6. Inspector General study.

**1 SEC. 2. REPEAL OF LIMITED SCOPE AUDIT.**

2 (a) IN GENERAL.—Section 103(a)(3) of the Em-  
 3 ployee Retirement Income Security Act of 1974 (29  
 4 U.S.C. 1023(a)(3)) is amended by amending subpara-  
 5 graph (C) to read as follows:

6 “(C) An accountant who is offering an opinion under  
 7 this section shall, to the extent consistent with generally  
 8 accepted auditing standards, rely on the work of any inde-  
 9 pendent public accountant of an entity that holds assets  
 10 or processes transactions of the employee benefit plan.”

11 (b) CONFORMING AMENDMENT.—Section  
 12 103(a)(3)(A) of such Act (29 U.S.C. 1023(a)(3)(A)) is  
 13 amended by striking “Except as provided in subparagraph  
 14 (C), the” and inserting “The”.

15 (c) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply with respect to opinions required  
 17 under section 103(a)(3)(A) of the Employee Retirement  
 18 Income Security Act of 1974 for plan years beginning on  
 19 or after January 1 of the calendar year following the date  
 20 of the enactment of this Act.

1 **SEC. 3. REPORTING AND ENFORCEMENT REQUIREMENTS**  
 2 **FOR EMPLOYEE BENEFIT PLANS.**

3 (a) IN GENERAL.—Part 1 of subtitle B of title I of  
 4 the Employee Retirement Income Security Act of 1974  
 5 (29 U.S.C. 1021 et seq.) is amended—

6 (1) by redesignating section 111 as section 112,  
 7 and

8 (2) inserting after section 110 the following  
 9 new section:

10 “DIRECT REPORTING OF CERTAIN EVENTS

11 “SEC. 111. (a) REQUIRED NOTIFICATIONS.—

12 “(1) NOTIFICATIONS BY PLAN ADMINIS-  
 13 TRATOR.—Within 5 business days after an adminis-  
 14 trator of an employee benefit plan determines that  
 15 there is evidence (or after the administrator is noti-  
 16 fied under paragraph (2)) that an irregularity may  
 17 have occurred with respect to the plan, the adminis-  
 18 trator shall—

19 “(A) notify the Secretary of the irregular-  
 20 ity in writing; and

21 “(B) furnish a copy of such notification to  
 22 the accountant who is currently engaged under  
 23 section 103(a)(3)(A).

24 “(2) NOTIFICATIONS BY ACCOUNTANT.—

25 “(A) IN GENERAL.— Within 5 business  
 26 days after an accountant engaged by the ad-

1 administrator of an employee benefit plan under  
2 section 103(a)(3)(A) determines in connection  
3 with such engagement that there is evidence  
4 that an irregularity may have occurred with re-  
5 spect to the plan, the accountant shall—

6 “(i) notify the plan administrator of  
7 the irregularity in writing, or

8 “(ii) if the accountant determines that  
9 there is evidence that the irregularity may  
10 have involved an individual who is the plan  
11 administrator or who is a senior official of  
12 the plan administrator, notify the Sec-  
13 retary of the irregularity in writing.

14 “(B) NOTIFICATION UPON FAILURE OF  
15 PLAN ADMINISTRATOR TO NOTIFY.—If an ac-  
16 countant who has provided notification to the  
17 plan administrator pursuant to subparagraph  
18 (A)(i) does not receive a copy of the administra-  
19 tor’s notification to the Secretary required in  
20 paragraph (1) within the 5-business day period  
21 specified therein, the accountant shall furnish  
22 to the Secretary a copy of the accountant’s no-  
23 tification made to the plan administrator on the  
24 next business day following such period.

25 “(3) IRREGULARITY DEFINED.—

1           “(A) For purposes of this subsection, the  
2           term ‘irregularity’ means—

3                   “(i) a theft, embezzlement, or a viola-  
4                   tion of section 664 of title 18, United  
5                   States Code (relating to theft or embezzle-  
6                   ment from an employee benefit plan);

7                   “(ii) an extortion or a violation of sec-  
8                   tion 1951 of title 18, United States Code  
9                   (relating to interference with commerce by  
10                  threats or violence);

11                  “(iii) a bribery, a kickback, or a viola-  
12                  tion of section 1954 of title 18, United  
13                  States Code (relating to offer, acceptance,  
14                  or solicitation to influence operations of an  
15                  employee benefit plan);

16                  “(iv) a violation of section 1027 of  
17                  title 18, United States Code (relating to  
18                  false statements and concealment of facts  
19                  in relation to employee benefit plan  
20                  records); or

21                  “(v) a violation of section 411, 501, or  
22                  511 of this title (relating to criminal viola-  
23                  tions).

24           “(B) The term ‘irregularity’ does not in-  
25           clude any act or omission described in this

1 paragraph involving less than \$1,000 unless  
2 there is reason to believe that the act or omis-  
3 sion may bear on the integrity of plan manage-  
4 ment.

5 “(b) NOTIFICATION UPON TERMINATION OF EN-  
6 GAGEMENT OF ACCOUNTANT.—

7 “(1) NOTIFICATION BY PLAN ADMINIS-  
8 TRATOR.—Within 5 business days after the termi-  
9 nation of an engagement of an accountant under  
10 section 103(a)(3)(A) with respect to an employee  
11 benefit plan, the administrator of such plan shall—

12 “(A) notify the Secretary in writing of  
13 such termination, giving the reasons for such  
14 termination, and

15 “(B) furnish the accountant whose engage-  
16 ment was terminated with a copy of the notifi-  
17 cation sent to the Secretary.

18 “(2) NOTIFICATION BY ACCOUNTANT.—If the  
19 accountant referred to in paragraph (1)(B) has not  
20 received a copy of the administrator’s notification to  
21 the Secretary as required under paragraph (1)(B),  
22 or if the accountant disagrees with the reasons given  
23 in the notification of termination of the engagement  
24 for auditing services, the accountant shall notify the  
25 Secretary in writing of the termination, giving the

1 reasons for the termination, within 10 business days  
2 after the termination of the engagement.

3 “(c) DETERMINATION OF PERIODS REQUIRED FOR  
4 NOTIFICATION.—In determining whether a notification re-  
5 quired under this section with respect to any act or omis-  
6 sion has been made within the required number of busi-  
7 ness days—

8 “(1) the day on which such act or omission be-  
9 gins shall not be included; and

10 “(2) Saturdays, Sundays, and legal holidays  
11 shall not be included.

12 For purposes of this subsection, the term ‘legal holiday’  
13 means any Federal legal holiday and any other day ap-  
14 pointed as a holiday by the State in which the person re-  
15 sponsible for making the notification principally conducts  
16 business.

17 “(d) IMMUNITY FOR GOOD FAITH NOTIFICATION.—  
18 No accountant or plan administrator shall be liable to any  
19 person for any finding, conclusion, or statement made in  
20 any notification made pursuant to subsection (a)(2) or  
21 (b)(2), or pursuant to any regulations issued under those  
22 subsections, if the finding, conclusion, or statement is  
23 made in good faith.”.

24 (b) CIVIL PENALTY.—

1 (1) IN GENERAL.—Section 502(c) of such Act  
 2 (29 U.S.C. 1132(c)) is amended by inserting after  
 3 paragraph (6) the following new paragraph:

4 “(7)(A) The Secretary may assess a civil penalty of  
 5 up to \$50,000 against any administrator who fails to pro-  
 6 vide the Secretary with any notification as required under  
 7 section 111.

8 “(B) The Secretary may assess a civil penalty of up  
 9 to \$50,000 against any accountant who knowingly and  
 10 willfully fails to provide the Secretary with any notification  
 11 as required under section 111.”.

12 (2) CONFORMING AMENDMENT.—Section  
 13 502(a)(6) (29 U.S.C. 1132(a)(6)) is amended by  
 14 striking “or (5)” and inserting “(5), or (7)”.

15 (c) CLERICAL AMENDMENTS.—

16 (1) Section 514(d) (29 U.S.C. 114(d)) is  
 17 amended by striking “111” and inserting “112”.

18 (2) The table of contents in section 1 is amend-  
 19 ed by striking the item relating to section 111 and  
 20 inserting the following new items:

“Sec. 111. Direct reporting of certain events.

“Sec. 112. Repeal and effective date.”.

21 (d) EFFECTIVE DATE.—The amendments made by  
 22 this section shall apply with respect to any irregularity or  
 23 termination of engagement described in the amendments  
 24 only if the 5-day period described in the amendments in



1 connection with the irregularity or termination commences  
 2 at least 90 days after the date of the enactment of this  
 3 Act.

4 **SEC. 4. ADDITIONAL REQUIREMENTS FOR QUALIFIED PUB-**  
 5 **LIC ACCOUNTANTS.**

6 (a) IN GENERAL.—Section 103(a)(3)(D) of the Em-  
 7 ployee Retirement Income Security Act of 1974 (29  
 8 U.S.C. 1023(a)(3)(D)) is amended—

9 (1) by inserting “(i)” after “(D)”;

10 (2) by inserting “, with respect to any engage-  
 11 ment of an accountant under subparagraph (A)”  
 12 after “means”;

13 (3) by redesignating clauses (i), (ii), and (iii) as  
 14 subclauses (I), (II), and (III), respectively;

15 (4) by striking the period at the end of sub-  
 16 clause (III) (as so redesignated) and inserting a  
 17 comma;

18 (5) by adding after and below subclause (III)  
 19 (as so redesignated), the following: “but only if such  
 20 person meets the requirements of clauses (ii) and  
 21 (iii), with respect to such engagement.”; and

22 (6) by adding at the end the following new  
 23 clauses:

24 “(ii) A person meets the requirements of  
 25 this clause with respect to an engagement of

1 the person as an accountant under subpara-  
2 graph (A) if the person—

3 “(I) has in operation an appropriate  
4 internal quality control system;

5 “(II) has undergone a qualified exter-  
6 nal quality control review of the person’s  
7 accounting and auditing practices, includ-  
8 ing such practices relevant to employee  
9 benefit plans (if any), during the 3-year  
10 period immediately preceding such engage-  
11 ment; and

12 “(III) has completed, within the 2 cal-  
13 endar years immediately preceding such  
14 engagement, such continuing education or  
15 training as the Secretary in regulations de-  
16 termines is necessary to maintain profes-  
17 sional proficiency in connection with em-  
18 ployee benefit plans.

19 “(iii) A person meets the requirements of  
20 this clause with respect to an engagement of  
21 the person as an accountant under subpara-  
22 graph (A) if the person meets such additional  
23 requirements and qualifications of regulations  
24 which the Secretary deems necessary to ensure  
25 the quality of plan audits.

1 “(iv) For purposes of clause (ii)(II), an ex-  
2 ternal quality control review shall be treated as  
3 qualified with respect to a person referred to in  
4 clause (ii) if—

5 “(I) such review is performed in ac-  
6 cordance with the requirements of external  
7 quality control review programs of recog-  
8 nized auditing standard setting bodies, as  
9 determined in regulations of the Secretary,  
10 and

11 “(II) in the case of any such person  
12 who has, during the peer review period,  
13 conducted 1 or more previous audits of  
14 employee benefit plans, such review in-  
15 cludes the review of an appropriate number  
16 (determined as provided in such regula-  
17 tions, but in no case less than 1) of plan  
18 audits in relation to the scale of the per-  
19 son’s auditing practice.

20 (b) EFFECTIVE DATES.—

21 (1) IN GENERAL.—Except as provided in para-  
22 graph (2), the amendments made by this section  
23 apply with respect to plan years beginning on or  
24 after the date which is 3 years after the date of the  
25 enactment of this Act.

1           (2) RESTRICTIONS ON CONDUCTING EXAMINA-  
 2           TIONS.—Clause (iii) of section 103(a)(1)(D) of the  
 3           Employee Retirement Income Security Act of 1974  
 4           (as added by subsection (a)(6)) takes effect on the  
 5           date of enactment of this Act.

6           (3) REGULATIONS.—The Secretary shall issue  
 7           regulations under this section no later than Decem-  
 8           ber 31, 1998.

9   **SEC. 5. CLARIFICATION OF FIDUCIARY PENALTIES.**

10          (a) MODIFICATION OF PROHIBITION OF ASSIGNMENT  
 11          OR ALIENATION.—

12               (1) AMENDMENT TO ERISA.—Section 206(d) of  
 13          the Employee Retirement Income Security Act of  
 14          1974 (29 U.S.C. 1056(d)) is amended by adding at  
 15          the end the following new paragraphs:

16          “(4) Paragraph (1) shall not apply to any offset of  
 17          a participant’s accrued benefit in an employee pension  
 18          benefit plan against an amount that the participant is or-  
 19          dered or required to pay to the plan if—

20               “(A) the order or requirement to pay arises—

21                       “(i) under a judgment of conviction for a  
 22                       crime involving such plan,

23                       “(ii) under a civil judgment (including a  
 24                       consent order or decree) entered by a court in  
 25                       an action brought in connection with a violation

1 (or alleged violation) of part 4 of this subtitle,  
2 or

3 “(iii) pursuant to a settlement agreement  
4 between the Secretary and the participant, or a  
5 settlement agreement between the Pension Ben-  
6 efit Guaranty Corporation and the participant,  
7 in connection with a violation (or alleged viola-  
8 tion) of part 4 by a fiduciary or any other per-  
9 son,

10 “(B) the judgment, order, decree, or settlement  
11 agreement expressly provides for the offset, and

12 “(C) in any case in which the participant has  
13 a spouse at the time at which the offset is to be  
14 made—

15 “(i) the spouse has consented in writing to  
16 the offset and the consent is witnessed by a no-  
17 tary public or representative of the plan,

18 “(ii) the offset represents an amount which  
19 the spouse is ordered in the judgment to pay to  
20 the plan, or

21 “(iii) in the judgment, order, decree, or  
22 settlement, the spouse retains the right to re-  
23 ceive the value of the survivor annuity under a  
24 qualified joint and survivor annuity provided  
25 pursuant to section 205(a)(1) and under a

1 qualified preretirement survivor annuity pro-  
2 vided pursuant to section 205(a)(2), determined  
3 in accordance with paragraph (5).

4 “(5)(A) The value of the survivor annuity described  
5 in paragraph (4)(C)(iii) shall be determined as if—

6 “(i) the participant terminated employment on  
7 the date of the offset,

8 “(ii) there was no offset,

9 “(iii) the plan permitted retirement only on or  
10 after normal retirement age,

11 “(iv) the plan provided only the minimum-re-  
12 quired qualified joint and survivor annuity, and

13 “(v) the amount of the qualified preretirement  
14 survivor annuity under the plan is equal to the  
15 amount of the survivor annuity payable under the  
16 minimum-required qualified joint and survivor annu-  
17 ity.

18 “(B) For purposes of this paragraph, the term ‘mini-  
19 mum-required qualified joint and survivor annuity’ means  
20 the qualified joint and survivor annuity which is the actu-  
21 arial equivalent of a single annuity for the life of the par-  
22 ticipant and under which the survivor annuity is 50 per-  
23 cent of the amount of the annuity which is payable during  
24 the joint lives of the participant and the spouse.”.

1           (2) EFFECTIVE DATE.—The amendments made  
 2       by this section apply to judgments, orders, and de-  
 3       crees issued, and settlement agreements entered  
 4       into, on or after the date of enactment of this Act.

5       (b) CONFORMING AMENDMENTS TO THE INTERNAL  
 6 REVENUE CODE RELATING TO ERISA ENFORCEMENT.—

7           (1) SPECIAL RULE FOR CERTAIN JUDGMENTS  
 8       AND SETTLEMENTS.—Section 401(a)(13) of the In-  
 9       ternal Revenue Code of 1986 (26 U.S.C.  
 10      401(a)(13)) is amended by adding at the end the  
 11      following new subparagraphs:

12           “(C) SPECIAL RULE FOR CERTAIN JUDG-  
 13       MENTS AND SETTLEMENTS.—Subparagraph (A)  
 14       shall not apply to any offset of a participant’s  
 15       accrued benefit in a plan against an amount  
 16       that the participant is ordered or required to  
 17       pay to the plan if—

18           “(i) the order or requirement to pay  
 19       arises—

20           “(I) under a judgment of convic-  
 21       tion for a crime involving such plan,

22           “(II) under a civil judgment (in-  
 23       cluding a consent order or decree) en-  
 24       tered by a court in an action brought  
 25       in connection with a violation (or al-

1           leged violation) of part 4 of subtitle B  
2           of title I of the Employee Retirement  
3           Income Security Act of 1974, or

4           “(III) pursuant to a settlement  
5           agreement between the Secretary of  
6           Labor and the participant, or a settle-  
7           ment agreement between the Pension  
8           Benefit Guaranty Corporation and the  
9           participant, in connection with a viola-  
10          tion (or alleged violation) of part 4 of  
11          subtitle B of title I of such Act,

12          “(ii) the judgment, order, decree, or  
13          settlement agreement expressly provides  
14          for the offset of all or part of the amount  
15          ordered or required to be paid to the plan  
16          against the participant’s accrued benefit in  
17          the plan, and

18          “(iii) if the participant has a spouse  
19          at the time at which the offset is to be  
20          made—

21                  “(I) such spouse has consented  
22                  in writing to such offset and such con-  
23                  sent is witnessed by a notary public or  
24                  representative of the plan,



1 “(II) such spouse is ordered or  
2 required to pay in such judgment,  
3 order, decree, or settlement an  
4 amount to the plan in connection with  
5 a violation of part 4 of subtitle B of  
6 title I of such Act, or

7 “(III) in such judgment, order,  
8 decree, or settlement, such spouse re-  
9 tains the right to receive the value of  
10 the survivor annuity under a qualified  
11 joint and survivor annuity provided  
12 pursuant to paragraph (11)(A)(i) and  
13 under a qualified preretirement survi-  
14 vor annuity provided pursuant to  
15 paragraph (11)(A)(ii), determined in  
16 accordance with subparagraph (D).

17 “(D) DETERMINATION OF VALUE OF SUR-  
18 VIVOR ANNUITY IN CONNECTION WITH OFF-  
19 SET.—The value of the survivor annuity de-  
20 scribed in subparagraph (C)(iii)(III) shall be  
21 determined as if—

22 “(i) the participant terminated em-  
23 ployment on the date of the offset,

24 “(ii) there was no offset,

1 “(iii) the plan permitted retirement  
2 only on or after normal retirement age,

3 “(iv) the plan provided only the mini-  
4 mum-required qualified joint and survivor  
5 annuity, and

6 “(v) the amount of the qualified pre-  
7 retirement survivor annuity under the plan  
8 is equal to the amount of the survivor an-  
9 nuity payable under the minimum-required  
10 qualified joint and survivor annuity.

11 For purposes of this subparagraph, the term  
12 ‘minimum-required qualified joint and survivor  
13 annuity’ means the qualified joint and survivor  
14 annuity which is the actuarial equivalent of a  
15 single annuity for the life of the participant and  
16 under which the survivor annuity is 50 percent  
17 of the amount of the annuity which is payable  
18 during the joint lives of the participant and the  
19 spouse.

20 “(E) WAIVER OF CERTAIN DISTRIBUTION  
21 REQUIREMENTS.—With respect to the require-  
22 ments of this subsection and subsection(k), and  
23 sections 403(b) and 409(d), a plan shall not be  
24 treated as failing to meet such requirements

1           solely by reason of an offset under subpara-  
2           graph (C).”.

3           (2) EFFECTIVE DATE.—The amendment made  
4           by subsection (a) shall apply to judgments, orders,  
5           and decrees issued, and settlement agreements en-  
6           tered into, on or after the date of enactment of this  
7           Act.

8           (c) CIVIL PENALTIES FOR BREACH OF FIDUCIARY  
9           RESPONSIBILITY.—

10           (1) IMPOSITION AND AMOUNT OF PENALTY  
11           MADE DISCRETIONARY.—Section 502(l)(1) of the  
12           Employee Retirement Income Security Act of 1974  
13           (29 U.S.C. 1132(l)) is amended—

14                   (A) by striking “shall” and inserting  
15                   “may”, and

16                   (B) by striking “equal to” and inserting  
17                   “not greater than”.

18           (2) APPLICABLE RECOVERY AMOUNT.—Section  
19           502(l)(2) of such Act (29 U.S.C. 1132(l)(2)) is  
20           amended to read as follows:

21           “(2) For purposes of paragraph (1), the term ‘appli-  
22           cable recovery amount’ means any amount which is recov-  
23           ered from (or on behalf of) any fiduciary or other person  
24           in connection with a breach or violation described in para-  
25           graph (1), following receipt by the fiduciary or other per-

1 son of written notice from the Secretary of the violation,  
 2 whether paid voluntarily or by order of a court in a judicial  
 3 proceeding instituted by the Secretary under subsection  
 4 (a)(2) or (a)(5) if the recovery is not made within 30 days.  
 5 The Secretary may, in the Secretary's sole discretion, ex-  
 6 tend the 30-day period described in the preceding sen-  
 7 tence.”.

8 (3) OTHER RULES.—Section 502(l) (29 U.S.C.  
 9 1132(l)) is amended by adding at the end the follow-  
 10 ing new paragraphs:

11 “(5) A person shall be jointly and severally liable for  
 12 the penalty described in paragraph (1) to the same extent  
 13 that the person is jointly and severally liable for the appli-  
 14 cable recovery amount on which the penalty is based.

15 “(6) No penalty shall be assessed under this sub-  
 16 section unless the person against whom the penalty is as-  
 17 sessed is given notice and opportunity for a hearing with  
 18 respect to the violation and applicable recovery amount.”.

19 (4) EFFECTIVE DATES.—

20 (A) IN GENERAL.—The amendments made  
 21 by this subsection shall apply to any breach of  
 22 fiduciary responsibility or other violation of part  
 23 4 of title I of the Employee Retirement Income  
 24 Security Act of 1974 occurring on or after the  
 25 date of enactment of this Act.

1           (B) TRANSITION RULE.—In applying the  
2           amendment made by paragraph (2) (relating to  
3           applicable recovery amount), a breach or other  
4           violation occurring before the date of the enact-  
5           ment of this Act which continues after the  
6           180th day after that date (disregarding any  
7           break in the continuance before the end of the  
8           180th day period) shall be treated as having oc-  
9           curred after the date of enactment.

10 **SEC. 6. INSPECTOR GENERAL STUDY.**

11       (a) STUDY.—The Inspector General of the Depart-  
12       ment of Labor shall conduct a study on the need for regu-  
13       latory standards and procedures to authorize the Sec-  
14       retary, in appropriate cases, to prohibit persons from serv-  
15       ing as qualified accountants for purposes of section 103  
16       of the Employee Retirement Income Security Act of 1974  
17       (29 U.S.C. 1023).

18       (b) MATTERS TO BE STUDIED.—In conducting the  
19       study under this section, the Inspector General shall ad-  
20       dress whether standards and procedures to prohibit per-  
21       sons from serving as qualified public accountants are like-  
22       ly to improve the quality of employee benefit plan audits,  
23       and the potential for increased costs to plans. If the In-  
24       specter General concludes that regulations incorporating

1 standards and procedures would be appropriate, the study  
2 shall include recommended standards and procedures.

3 (c) REPORT.—Not later than 1 year after the date  
4 of the enactment of this Act, the Inspector General shall  
5 submit a report on the results of the study conducted pur-  
6 suant to this section to each house of Congress and the  
7 Secretary of Labor.

○